

**04-631      RICHARDS, SEC., KS DEP'T OF REVENUE V. PRAIRIE BAND  
POTAWATOMI NATION**

Decision Below:    379 F.3d 979 (10<sup>th</sup> Cir. 2004)

QUESTIONS PRESENTED

- 1)    When a State taxes the receipt of fuel by non-tribal distributors, manufacturers and importers, and such receipt occurs off-reservation, does the interest-balancing test in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980), apply because the fuel is later sold by a tribe to final consumers?
- 2)    Should the Court abandon the *White Mountain Apache* interest-balancing test in favor of a preemption analysis based on the principle that Indian immunities are dependent upon congressional intent?
- 3)    Did the court of appeals err in applying the *White Mountain Apache* interest balancing test by, *inter alia*, placing dispositive weight on the fact that a tribally-owned gas station derives income from largely non-tribal patrons of the tribe's nearby casino?

Cert. Granted 2/28/05